

NEW SECTION

WAC 192-100-055 Nondisclosure and willful nondisclosure--RCW 50.20.160. (1) "Nondisclosure" is not a synonym for fraud or misrepresentation. It refers to situations in which you have information or knowledge which you fail to disclose to the department inadvertently or through oversight. The department may redetermine an allowance of benefits resulting from nondisclosure at any time within two years following the benefit year in which the allowance was made.

(2) "Willful nondisclosure" means you fail to disclose information when you knew or should have known that it was material. The department may redetermine an allowance of benefits resulting from willful nondisclosure at any time.

NEW SECTION

WAC 192-100-060 Labor dispute. A labor dispute means a deliberate action by two or more individuals or by an employer resulting in a strike or lockout where wages, hours, working conditions, or terms of employment are at issue.

NEW SECTION

WAC 192-100-065 Preponderance of evidence defined. "Preponderance of evidence" means evidence sufficient to persuade a reasonable person considering all the evidence that the proposal is more probably true than not true.

NEW SECTION

WAC 192-100-070 Conditional payments. (1) A conditional payment is payment issued to you after you have already received benefits but during a period in which the department questions your continued eligibility for benefits. Your right to retain such

payment is conditioned on the department's finding that you were eligible for benefits during the week(s) in question.

(2) You are no longer considered to be in continued claim status if you have not claimed benefits (had a break in claim) for four weeks or longer.

(3) A conditional payment is not considered a "determination of allowance" as provided in RCW 50.20.160(3).

NEW SECTION

WAC 192-110-001 May the department refuse to accept my claim, appeal or petition? (1) Except as provided in subsection (2) of this section, no employee or agent of the department may refuse to accept your claim, appeal, or petition relating to any program administered by this department regardless of the employee or agent's opinion concerning its merits.

(2) You must provide the department with your name and Social Security account number in order to file a claim for benefits.

NEW SECTION

WAC 192-110-090 Prompt payment of benefits. The department will promptly issue payment once it determines that you are eligible for benefits.

(1) An appeal by an employer concerning your eligibility for benefits will not prevent payment.

(2) If benefits are allowed to you as the result of an appeal decision, the department will promptly pay benefits and a petition for the commissioner's review will not prevent payment.

(3) If benefits are allowed to you as the result of a commissioner's decision, the department will promptly pay benefits and the filing of a petition for judicial review will not prevent payment.

(4) If benefits are allowed to you as the result of a court decision, the department will promptly pay benefits. An appeal to a court of higher jurisdiction will not prevent payment.

NEW SECTION

WAC 192-110-095 May I backdate my application for unemployment benefits (RCW 50.04.030)? (1) **General rule.** A benefit year begins on Sunday of the calendar week in which you file your application for benefits. However, an application may be backdated for good cause or for the convenience of the department.

(2) **Definitions.** As used in this section:

(a) "Good cause" means factors that would prevent a reasonably prudent person in similar circumstances from filing an application

for benefits. These include, but are not limited to, acting on advice directly from a department employee or agent on whom a reasonable person would rely, incapacity due to illness or injury, or other serious factors.

(b) "For the convenience of the department" means those situations where it is difficult or impossible for the department to accept a timely application. These include, but are not limited to, equipment breakdowns, lack of available staff to accept applications, or special handling requirements.

(3) Limitations on good cause.

(a) You must file your application for benefits during the first week in which those factors that constitute good cause are no longer present. The effective date will be Sunday of such week.

(b) Backdating will not be allowed if you claim good cause based on information from department staff or agents where you could reasonably be expected to question the accuracy of this information, and you knew or should have known of your redetermination or appeal rights and failed to exercise them.

NEW SECTION

WAC 192-110-110 Establishing a new benefit year--RCW 50.04.030. Once your current benefit year expires, you are not eligible for a new benefit year unless you have returned to work and earned at least six times the weekly benefit amount on your new claim.

Example: You separate from one job on December 29, 2008, and from a second job on February 7, 2009. You file an application for benefits effective February 8, 2009. When the benefit year ends, you must have earned six times your new weekly benefit amount since February 7, 2009, to be eligible for a new claim.

NEW SECTION

WAC 192-110-150 May I have an individual with power of attorney or other authorization file an initial or weekly claim for benefits, testify in my place, or otherwise certify on my behalf? No. RCW 9A.72.085 requires that an oath, certification, verification or declaration must be signed or sworn to by the person making it. (Exception: An estate executor or administrator may file a claim for the last completed calendar week prior to a claimant's death.)

(1) You are required to personally certify on your initial application for benefits and weekly claims that the information

provided to the department is correct.

(2) An individual with power of attorney may not testify in your place in any adjudicative proceeding. Such individual may file an appeal on your behalf if he or she provides the department with a copy of the document granting him or her power of attorney. Such individual may also be called as a witness on your behalf or assist with the preparation of your case but you must provide sworn testimony in support of your appeal.

(3) An agent with power of attorney may not otherwise act on your behalf when statutes or regulations specifically or implicitly require your signature or personal certification.

NEW SECTION

WAC 192-140-035 What happens if I do not respond to a request for information? (1) The department will presume that you are disqualified from benefits if you provide potentially disqualifying information, or fail to provide necessary information, and then do not respond to a request for specific information. The department will deny benefits under RCW 50.20.010.

(2) This denial is for an indefinite period of time and will continue until you provide the requested information.

(3) Once you provide the requested information, the department may issue a redetermination under RCW 50.20.160. The department will issue a new decision allowing benefits if you provide enough information to establish your eligibility for benefits.

NEW SECTION

WAC 192-140-040 What happens if I do not provide details about my employment when filing my weekly claim? (1) The department will presume you are not unemployed under RCW 50.04.310 if you:

(a) Report that you had work and earnings for one or more weeks;

(b) Fail to provide employer name and address; and

(c) Do not respond to a request for information.

(2) Further, the department will presume you are not unemployed under RCW 50.04.310 if:

(a) You report that you will have earnings for a week not yet claimed;

(b) Subsequently claim benefits for the week without providing employer name and address and the amount of earnings; and

(c) Do not respond to a request for information.

(3) The department will deny benefits under this section based on RCW 50.20.010. This denial is for a definite period of time and applies only to the week(s) in which work and earnings information is incomplete.

NEW SECTION

WAC 192-140-045 What happens if I do not respond to a request for information about a refusal of an offer of work? (1) If you do not respond to a request for information about a refusal of an offer of work, the department will presume you refused an offer of suitable work without good cause.

(2) The department will deny benefits under RCW 50.20.080. This denial is for an indefinite period of time and will continue for seven weeks and until you earn seven times your weekly benefit amount in employment that is covered by Title 50 RCW.

NEW SECTION

WAC 192-140-050 What happens if I do not respond to a request for information about failure to apply for work? (1) The department will presume you failed to apply for suitable work without good cause if:

(a) You have been directed by the department to apply for work;

(b) The department is advised that you have failed to comply as directed; and

(c) You do not respond to a request for information.

(2) The department will deny benefits under RCW 50.20.080. This denial is for an indefinite period of time and will continue for seven weeks and until you earn seven times your weekly benefit in employment that is covered by Title 50 RCW.

NEW SECTION

WAC 192-140-055 What happens if I do not respond to a request for information about a labor dispute? (1) The department will presume you are unemployed as a result of a labor dispute and directly interested in or participating in the dispute if you do not respond to a request for information about a labor dispute.

(2) The department will deny benefits under RCW 50.20.090. This denial is for an indefinite period of time and will continue until you provide the requested information.

NEW SECTION

WAC 192-140-095 What happens if I do not respond to a request for details about my separation from work? (1) If you report work and earnings in one week and during the week following you do not report work and earnings, you must provide details about your separation from work.

(2) The department will presume you have voluntarily quit work without good cause under RCW 50.20.050 unless you provide:

(a) Complete employer information, including:

(i) Name of employer;

(ii) Complete address of employer;

(iii) Hours worked and earnings if not previously reported;

and

(iv) Last day worked.

(b) Details about the reasons for separation from work.

(3) A separation from employment occurs whenever the employer-employee relationship is severed. For purposes of this section, a separation occurs when:

(a) You are not scheduled to work for a period of one week or more; or

(b) You have a week with no earnings following a week in which you had earnings.

(4) The department will deny benefits under RCW 50.20.050. This denial is for an indefinite period of time and will continue for seven weeks and until you earn seven times your weekly benefit in employment that is covered by Title 50 RCW.

NEW SECTION

WAC 192-140-105 What happens if I do not respond to a request for information about a voluntary quit from work? (1) If you do not respond to a request for information about a voluntary quit from work the department will presume you have voluntarily quit work without good cause under RCW 50.20.050, unless available evidence shows that your separation from work was for another reason.

(2) If benefits are denied as a voluntary quit, the denial is for an indefinite period of time and will continue for seven weeks and until you earn seven times your weekly benefit in employment that is covered by Title 50 RCW.

NEW SECTION

WAC 192-140-130 What happens if I do not respond to a request for information about holiday or vacation pay? (1) The department will presume you are not unemployed as provided in RCW 50.04.310 if you report that you received holiday or vacation pay and the amount paid, and do not respond to a request for specific information about the holiday or vacation pay.

(2) If you report that you will have holiday or vacation pay for a week not yet claimed and subsequently claim benefits for the week without providing employer name and address and the amount of payment, and do not respond to a request for information, the department will presume you are not unemployed as provided in RCW 50.04.310.

(3) The department will deny benefits under RCW 50.20.010. This denial is for a definite period of time and applies only to the week(s) in which holiday or vacation pay information is incomplete.

NEW SECTION

WAC 192-140-135 What happens if I fail to respond to a request for information about athletic employment? (1) If your eligibility for benefits is based on employment as a participant in sports or athletic events and you do not respond to a request for information, the department will presume you have reasonable assurance of performing similar services in the upcoming season.

(2) The department will deny benefits under RCW 50.20.113. This denial is for a definite period of time and applies to the entire period between sporting seasons.

NEW SECTION

WAC 192-140-140 What happens if I fail to respond to a request for information about reasonable assurance to return to work in educational employment? (1) If your eligibility for benefits is based on services to an educational institution, your employer has provided information that you have reasonable assurance of returning to work after the school holiday or break, and you do not respond to a request for information about reasonable assurance, the department will presume that such assurance exists.

(2) The department will deny benefits under RCW 50.44.050. This denial is for a definite period of time and applies to the

period between academic years or terms, and during holiday or vacation periods.

NEW SECTION

WAC 192-140-145 What happens if I do not respond to a request for pension information? (1) The department will presume you are receiving a pension in an amount greater than your weekly benefit amount and contributed to only by a base period employer if:

(a) You report that you have applied for a retirement pension or your pension has changed since your last claim; and

(b) You do not respond to the question concerning pension information when filing your weekly claim.

(2) The department will deny benefits under RCW 50.04.323. This denial is for an indefinite period of time and will continue until you provide the information showing that you are not ineligible for benefits under RCW 50.04.323.

NEW SECTION

WAC 192-150-145 Change in working conditions covered by RCW 50.20.050 (2)(b)(v) through (x). (1) If you quit work due to a change in working conditions that meets the requirements of RCW 50.20.050 (2)(b)(v) through (x), the department will not deny benefits solely on the basis that you continued working for a brief period of time following the change. However, you must demonstrate to the department that the change in working conditions was the motivating factor for quitting work.

(2) "Brief period of time" means the amount of time a reasonably prudent person would have continued working after the change in circumstances.

NEW SECTION

WAC 192-150-225 Examples of flagrant and wanton misconduct.

(1) Examples of behaviors that may constitute flagrant and wanton conduct resulting in a finding of gross misconduct include, but are not limited to:

(a) A medical provider under the influence of illegal narcotics while at work;

(b) A health care worker who steals money or valuables from patients;

(c) A commercial truck driver under the influence of alcohol while operating the employer's vehicle;

(d) A school employee convicted of conduct that requires the individual to register as a sex offender;

(e) An attorney convicted of conduct that results in being disbarred or suspended from the practice of law; or

(f) A department store employee who secretly films or photographs customers in the store's fitting rooms.

(2) These behaviors are examples only and do not require the department to find gross misconduct in similar situations.

NEW SECTION

WAC 192-150-230 What happens if I am discharged prior to the effective date of my resignation? (1) Except as provided in subsection (2) of this section, if you notify your employer that you are resigning from your job and the employer discharges you prior to the end of the notice period, the separation is treated as a discharge. The department will not deny benefits unless the employer can show that you were discharged for misconduct.

(2) If your employer pays you through the notice period but requires no work, the separation is treated as a quit. The separation date is the last day of the notice period. Payment for the notice period is deductible from benefits as payment in lieu of notice.

NEW SECTION

WAC 192-170-010 Availability for work--RCW 50.20.010. (1) In general, the department will consider you available for work if you:

(a) Are willing to work full-time, part-time, and accept temporary work during all of the usual hours and days of the week customary for your occupation.

(i) You are not required to be available for part-time or temporary work if it would substantially interfere with your return to your regular occupation.

(ii) The requirement to be available for full-time work does not apply under the circumstances described in WAC 192-170-050 (1)(b) or 192-170-070;

(b) Are capable of accepting and reporting for any suitable work within the labor market in which you are seeking work;

(c) Do not impose conditions that substantially reduce or limit your opportunity to return to work at the earliest possible time;

(d) Are available for work during the hours customary for your trade or occupation; and

(e) Are physically present in your normal labor market area, unless you are actively seeking and willing to accept work outside your normal labor market.

(2) You are not considered available for work if you fail or refuse to seek work as required in a directive issued by the department under WAC 192-180-010.

NEW SECTION

WAC 192-170-065 Suitable work factors--Agricultural labor--RCW 50.04.150 and 50.20.100. When deciding whether agricultural labor is suitable work for you, the department will consider the degree of risk involved to your health, safety, and morals, your physical fitness, your skill level, your length of unemployment and prospects for work in your customary occupation, the distance of the available work from your residence, and other factors pertinent to your ability to perform the work.

NEW SECTION

WAC 192-170-080 Leave of absence. (1) A leave of absence is an absence from work mutually and voluntarily agreed upon by you and your employer or a collective bargaining agent, or leave to which you are entitled under federal or state law, where the employer-employee relationship is continued and you will be reinstated in the same or similar job when the leave expires.

(a) If you are on a leave of absence, you are not unemployed and thus not eligible for benefits.

(b) If you choose not to return to work when the leave of absence ends, the separation is treated as a voluntary quit. The separation date will be the first working day after the leave expires.

(c) If no job is available with the employer when the leave of absence ends, the separation is treated as a layoff.

(d) If you have been on medical leave and are released for work by your medical provider, but your employer refuses to permit you to return to work, you are considered to be laid off and potentially eligible for benefits.

(2) A leave of absence does not exist if the employer offers you only a preference for rehire or a promise of a job if work exists at the end of the leave. An employee-initiated leave that only provides fringe benefits during the leave or preferential status for reemployment is not a leave of absence but a voluntary quit.

(3) A temporary or indefinite disciplinary suspension from work by the employer is not a leave of absence. The department will treat this as a discharge.

NEW SECTION

WAC 192-170-090 Incarceration. (1) If you were previously warned that your continued employment was in jeopardy because of poor attendance, and you engage in illegal activities where you are aware there is a clear possibility of arrest and detention, misconduct may be established under RCW 50.04.294 (2)(d) or (e).

(2) If you are jailed but later released without having been charged with or convicted of a crime, the separation is not considered misconduct except as provided in subsection (3) of this section.

(3) If your employer discharges you for absenteeism or job abandonment because you failed without good cause to notify the employer of your incarceration or anticipated release date, such failure may be considered misconduct.

(4) You will be considered unavailable for work during any days in which you are incarcerated unless those days are not part of your regular work week based on your occupation. Example: You

are sentenced to a specific time in custody but allowed to serve your time on weekends. If weekends are not part of your regular work week, you will be considered available for work.

NEW SECTION

WAC 192-170-100 AmeriCorps and AmeriCorps VISTA volunteers.

(1) AmeriCorps volunteers enroll with nonprofit organizations to provide services within the state. They may enroll in full-time or part-time programs. If you enroll in a part-time program, you can seek and accept other work. You are potentially eligible for benefits if you are immediately available for and seeking full-time work.

(2) AmeriCorps VISTA (volunteers in service to America) volunteers are assigned to public or private organizations to work towards meeting community needs. The contract requires they be available for service each day and evening of the week. AmeriCorps VISTA volunteers are not available for work. You are not eligible for benefits while under contract, even if you received benefits prior to enrollment in service.

(3) Stipends received as an AmeriCorps or AmeriCorps VISTA volunteer are not covered employment. They may not be used to requalify for benefits after a denial for a quit, discharge, or job refusal.

Chapter 192-190 WAC

DEDUCTIONS FROM UNEMPLOYMENT BENEFITS

NEW SECTION

WAC 192-190-010 Income tax withholding. (1) You may request to have federal income tax withheld from your benefits. If you choose to do so, the department will deduct the withholding at the percentage specified in 26 U.S.C. Section 3402(p)(2). You may cancel this withholding at any time.

(2) Benefits deducted for income tax purposes are considered paid to you. If you are paid benefits to which you are not entitled, the amount withheld for income tax will be included in the overpayment.

NEW SECTION

WAC 192-190-015 Deductions for child support--RCW 50.40.050.

(1) After being properly notified by a child support agency, the department will withhold a portion of your benefits to send to the agency to satisfy child support obligations.

(2) **Notification.** The child support agency is responsible for notifying you of the order to deduct child support from your unemployment benefits.

(3) **Overpayments.** Benefits deducted to satisfy child support obligations are considered paid to you. If you receive benefits to which you are not entitled, the amount deducted to satisfy child support obligations will be included in the overpayment.

(4) **Benefits withheld in error.** The child support agency is responsible for reimbursing you if the amount deducted from your benefits is greater than you are required to pay to satisfy your child support obligations. If an amount less than you are required to pay is deducted from your benefits, the department will deduct the additional amount from future benefit weeks.

(5) **Appeals.**

(a) You must file your appeal concerning the validity of the child support order, the total amount due, or the amount to be deducted from your benefits, with the child support agency.

(b) You may file your appeal concerning the department's authority to deduct child support from your benefits, the weeks for which the deduction is made, and the accuracy of the amount deducted with the department in the same manner as eligibility decisions are appealed. You may file your appeal based on the department's notice to you that child support obligations have been or will be deducted from your benefits. All laws and rules pertaining to benefit appeals apply to appeals under this subsection.

(6) **Effective date of deduction.** The department will not deduct child support obligations from benefits paid for weeks prior to the date on which notification is served on you by the child support agency.

NEW SECTION

WAC 192-190-020 Are lump sum retirement payments deductible from my benefits (RCW 50.04.323)? Lump sum retirement benefits are deductible from benefits as provided in this section.

(1) Lump sum retirement payments are prorated over the individual's life expectancy as determined by Title I in Regulation 1.72-9 of the Internal Revenue Code. The percentage contributed by the employer to the retirement will be prorated over the individual's life expectancy to determine the amount deducted from benefits.

(2) After a job separation, the withdrawal of only the funds and applicable interest contributed by the individual to a retirement pension is not deductible from benefits.

(3) The transfer or rollover of a lump sum retirement payment within sixty days of receipt to another long-term retirement plan, such as an individual retirement account (IRA), or 401K is not deductible from benefits.

NEW SECTION

WAC 192-190-025 How is the pension deduction calculated? (1) The share contributed by the employer to the pension is deductible from benefits. The amount of the deduction equals the percentage of the contribution(s) made by the base year employer as of the last pay period in the base year in which the contribution(s) was made. The department will prorate the employer's share to a weekly amount.

(a) The department will presume the services you provided to the employer in the base year affected eligibility for or increased

the pension amount unless you provide verification from the employer or the pension fund administrator showing otherwise.

(b) The department will presume you made no contribution to the pension unless you provide evidence satisfactory to the department that such a contribution was made.

(2) A disability pension based entirely on the percentage of disability is not deductible. For example, disability payments paid by the Veterans Administration (VA) based on extent of injury are not deductible.

(3) Retirement benefits paid by the Social Security Administration are not deductible from benefits.

(4) For purposes of this section, "pension" includes retirement benefits or retired pay, annuity, or other similar periodic payment.

NEW SECTION

WAC 192-190-030 Is reimbursement of expenses deductible from my benefits? (1) Moneys paid to you as reimbursement for expenses are not deductible from benefits. However, there must be a reasonable relationship between the amount paid and the actual expenses incurred. If the amount paid is greater than actual expenses, the entire amount must be reported to the department as remuneration and may be deducted from your weekly benefit amount.

(2) Examples:

(a) A volunteer firefighter is paid twenty-five dollars for each fire call. The amount is considered reimbursement for the costs associated with responding to the fire call, such as travel expenses. You are not required to report the reimbursement to the department when filing your claim.

(b) A volunteer firefighter is paid fifty dollars per week even if he or she has no fire calls during that week. The amount is considered remuneration because there is no relationship between the payment and the costs associated with service as a firefighter. You must report the payments to the department when filing your claim.

NEW SECTION

WAC 192-190-035 Vacation or holiday pay. (1) You must report vacation and holiday pay when filing your claim for benefits.

(2) If vacation or holiday pay is assigned to a specific time period by your employer or as part of a collective bargaining agreement, the department will deduct it from your benefits.

(3) If you receive a cash out of accrued vacation leave, it is not deductible from benefits.

NEW SECTION

WAC 192-190-040 Back pay and settlements. (1) "Back pay" means wages paid to a worker for a prior pay period. An employer may award back pay to a separated or suspended employee for a specific period of time.

If you received benefits for any weeks for which back pay is awarded, you must report the amount of the back pay to the department.

(a) If the employer does not deduct the amount owed before giving you the award, you will receive an overpayment notice and must pay the amount owed to the department.

(b) If the employer deducts the amount of benefits owed before giving you the back pay award, the employer must pay the amount owed to the department.

(2) A back pay award may not be used to purge a disqualifying separation.

A lump sum payment of worker's compensation benefits does not constitute a back pay award for purposes of RCW 50.20.160.

(3) A "settlement" is the resolution of a dispute or lawsuit under specific terms, often financial. The department will treat a settlement due to loss of wages the same as a back pay award.

NEW SECTION

WAC 192-190-045 Severance pay. When payment for your separation from work is assigned to any period before the date of separation, it is considered severance or separation pay. Severance pay is not deductible from benefits.

NEW SECTION

WAC 192-190-050 Termination pay. (1) Termination pay is the same as earnings and is deductible from benefits. It means payments that are assigned to and have a connection with the period following the last day you worked but before you are separated from employment. The payments may be connected to a specific period of

time by collective bargaining agreement, individual contract or hiring agreement, customary trade practice, or your request.

(2) Your employer may place conditions for receiving payments, such as requiring that you be available for work during the payment period as needed or stopping payment before the payment period ends if you get another job.

Example 1: The employer provides a job security plan which pays full salary and benefits for five months after the layoff date. The employees are on-call to work as needed for the employer. These payments are deductible because the payments are conditioned on your agreement to remain on-call.

Example 2: An employment contract provides for payments for up to two years following layoff, based on years of service. Fringe benefits continue during the period and accrued vacation time may be used to extend the length of the payments. Payments are deductible because there is a clear connection between the payments and the time period following the last day of work based on the continuation of fringe benefits such as vacation leave.

NEW SECTION

WAC 192-190-055 Payment in lieu of notice. (1) If you have a contract or hiring agreement that requires the employer to give you advance notice of termination, and the employer fails to do so, the payments you receive from the employer for wages or salary you would have earned during the notice period are deductible from benefits.

(2) If you give notice to the employer to quit work, and the employer discharges you before the end of the notice period, any wages paid to you through the end of the notice period are deductible from benefits.

NEW SECTION

WAC 192-190-060 Bonuses. (1) If a bonus is attributable to work you performed during a week in which you claimed benefits, the amount paid is deductible from benefits.

Example: You work twenty hours a week and receive partial unemployment benefits. Based on productivity for that week, your employer awards a fifty dollar cash bonus to workers. The fifty dollars is deductible from benefits.

(2) If a bonus is not attributable to work you performed during a week claimed, it is not deductible from benefits.

Example: You work eight months for an employer and are then

laid off. At the end of the year, your employer pays each worker a bonus of one hundred dollars for each month worked during the calendar year. You receive eight hundred dollars based on your eight months of work. Because the bonus is attributable to work performed before you separated from your job, it is not deductible from benefits.

(3) A bonus includes, but is not limited to, cash payments and other things of value that are over and above the employment contract or hiring agreement.

NEW SECTION

WAC 192-190-065 Tips. Tips are considered earnings and must be reported each week you claim benefits. They are deductible from benefits.

NEW SECTION

WAC 192-190-070 Jury duty--RCW 50.20.117. (1) Payment received because you are on-call or reporting as a prospective juror, or serving on a jury, is earnings and deductible from benefits.

(2) Payment received as reimbursement of expenses for travel, meals, and other costs associated with jury duty is not deductible from benefits.

NEW SECTION

WAC 192-190-075 Sick leave pay. (1) You must report sick leave pay when filing your claim for benefits.

(a) If sick leave pay is assigned to a specific time period by your employer or as part of a collective bargaining agreement, it is deductible from benefits.

(b) If you receive a cash out of accrued sick leave, it is not deductible from benefits.

(2) If your benefits are reduced because you reported sick leave pay, they will not be further reduced because you were not able to work on the day(s) for which you were on paid sick leave.

Example: You are sick for three days during a week. You receive sick leave pay for two of those days. Your benefits will

be reduced for those two days by the amount of sick leave paid to you. Your benefits will be reduced by one-seventh under RCW 50.20.130 for the third day because you were not able to work.

NEW SECTION

WAC 192-190-080 Disability payments. (1) Disability payments paid to you by an insurance company based on premiums paid by the employer are not earnings and are not deductible from benefits. (2) Disability payments paid to you from a trust fund paid solely by the employer's contributions are earnings and are deductible from benefits.

NEW SECTION

WAC 192-190-085 Work study. (1) The Higher Education Act (Public Law 102-325, Title IV) prohibits the deduction of federal financial aid, including work study, from benefits. If the financial aid award includes both federal and state moneys, it is not deductible from benefits.

(2) Earnings from work programs that require services in exchange for student financial aid are deductible from benefits unless Title IV funds are included in the award.

(3) Federally subsidized programs, such as the Workforce Investment Act, do not include Title IV funds. Students provide services to an employer who reports income for tax purposes. These earnings are deductible from benefits.

(4) Other forms of financial aid, such as grants or loans, which do not require the performance of services, are not deductible from benefits.

NEW SECTION

WAC 192-190-090 National Guard pay. You must report earnings if you are in the National Guard or military reserve and are on active duty more than seventy-two consecutive hours. Earnings for active duty that exceeds seventy-two consecutive hours are deductible from benefits.

NEW SECTION

WAC 192-190-100 AmeriCorps stipends. (1) Stipends received for participation as an AmeriCorps volunteer are considered payment for services and are deductible from benefits. Moneys received for education-related expenses, such as tuition and books, are not deductible from benefits.

(2) If you volunteer part-time and also work a part-time job, your earnings from the part-time job are deductible from benefits. See also WAC 192-170-100.

NEW SECTION

WAC 192-210-001 Which educational employees are subject to RCW 50.44.050? (1) Except as provided in subsection (2) of this section, the provisions of RCW 50.44.050 apply to services performed in the employ of an educational institution or institution of higher education operated by:

- (a) The state;
- (b) A political subdivision of the state;
- (c) A nonprofit organization or unit; or
- (d) An Indian tribe.

(2) (a) The provisions of RCW 50.44.050 do not apply if you are employed by a subsidiary business or organization owned or operated by an educational institution when:

- (i) The primary purpose of the subsidiary business or organization is other than educational;
- (ii) You are not employed in the role of faculty, research or principal administrative staff; and
- (iii) Your regular employment does not depend on the school's academic calendar.

(b) All three criteria must be met in order for your services to be exempt from the provisions of RCW 50.44.050. For example:

(i) You work for Pack Forest (operated by the University of Washington, College of Forest Resources) or one of the extension programs operated by Washington State University. You are not employed in the role of faculty, research or principal administrative staff and your regular employment does not depend on the school's academic calendar. However, the primary purpose of each of these entities is educational. Employment for these entities is subject to the provisions of RCW 50.44.050 regardless of the nature of your employment.

(ii) You work for a radio station that is wholly owned and operated by a college. The primary purpose of the business is other than educational, you are not employed in the role of faculty, research, or principal administrative staff, and your regular employment does not depend on the school's academic calendar. You are not subject to the restrictions of RCW 50.44.050.

NEW SECTION

WAC 192-210-045 When does reasonable assurance apply if I work for more than one school? (1) RCW 50.44.050 prevents the payment of benefits when "any and all" school wages for "any and all" schools for **any** week of unemployment fall between two successive academic terms or during holiday or vacation break periods.

(2) If you receive reasonable assurance for the following academic term from any school, the wages from all schools for whom you worked during the preceding academic term or break will be restricted.

Example: You worked for ABC and XYZ schools during spring 2009. You received reasonable assurance of returning to work during the fall 2009 term from ABC School but not from XYZ School. The wages from both schools must be restricted during the period between academic terms or breaks.

(3) The period during which wages will be restricted begins during the first full week in which any school for which you worked during the preceding academic term is on break and continues through the last full week in which all schools for which you worked during the preceding academic term have resumed a term of instruction.

Example: You worked for ABC and XYZ schools during the 2008-2009 academic year. Summer is not part of the academic year for either school. ABC School's summer break begins June 15, 2009, and ends September 2, 2009. XYZ School's break begins June 22, 2009, and ends September 9, 2009. Your school wages must be restricted from June 14, 2009, through September 5, 2009.

NEW SECTION

WAC 192-210-050 Reasonable assurance for substitute teachers--RCW 50.44.050(1). When deciding whether a substitute teacher has reasonable assurance of returning to work, the department will consider, but is not limited to, the following factors:

- (1) Number of full-time teaching positions;
- (2) Student enrollment;
- (3) Number of schools;
- (4) Size of substitute teacher list at the beginning, during, and end of the academic year or term;
- (5) School district priorities that affect the assignment of substitute teachers; and
- (6) The average number of substitute teachers assigned each day.

NEW SECTION

WAC 192-210-200 Professional athletes--RCW 50.20.113. (1)

A professional athlete is not eligible for benefits during the period between two successive sports seasons when substantially all of his or her base period wages were earned through participation in professional sports or athletic events and the individual has reasonable assurance of returning to professional sports during the next season.

(2) Definitions: For purposes of this section:

(a) "Substantially all" means ninety percent of the individual's base period wages were earned in professional sports.

(b) "Professional athlete" includes:

(i) A regular player or team player;

(ii) An alternate player;

(iii) An individual in training to become a regular player or team player; and

(iv) An individual who, although not performing active sports, is retained as a player or team member while recuperating from illness or disability.

"Professional athlete" does not include ancillary personnel such as managers, coaches, and trainers involved with the team or sporting event.

(3) Reasonable assurance exists when the individual has:

(a) A written or verbal multiyear contract which extends into the subsequent season; or

(b) Offered to work and the employer has expressed interest in hiring the athlete for the next season; or

(c) Expressed a readiness and intent to participate in the sport for the next season.

